

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF THE DENIAL )  
OF A SUBSTANTIAL DEVELOPMENT )  
PERMIT BY THE TOWN OF )  
STEILACOOM, )  
BURLINGTON NORTHERN, INC., )  
Appellant, )  
vs. )  
TOWN OF STEILACOOM, )  
Respondent. )

SHB No. 40

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of the denial of a shoreline development permit, came before the Shorelines Hearings Board in the Town Hall of the Town of Steilacoom on August 27, 28 and 29, 1973. Board members present, on August 27 and 28 were W. A. Gissberg (presiding officer), Walt Woodward, Arden A. Olson, the designee of the State Land Commissioner, and Gordon Y. Ericksen, appointed by the Association of Washington Cities; Board members present on August 29 were W. A. Gissberg and Arden A. Olson; appellant appeared through

EXHIBIT A

1 its attorney, Gerald A. Troy; respondent appeared through its  
2 attorney, K. Michael Jennings.

3 Having carefully considered the contentions of the parties,  
4 facts admitted by pre-hearing order, the transcript and the exhibits,  
5 post-hearing affidavits and briefs of the parties, and being fully  
6 advised, the Shorelines Hearings Board makes these

7 FINDINGS OF FACT

8 I.

9 Jurisdiction is vested in this hearings board by virtue of  
10 RCW 90.58.180, in that the appellant is a party aggrieved by the  
11 denial of a substantial development permit on the shorelines of the  
12 state by the respondent local government and that appellant duly  
13 and timely filed a Request for Review with the Shorelines Hearings  
14 Board, which the Office of Attorney General duly and timely certified.

15 II.

16 The parties, through their respective attorneys, orally stipulated  
17 at the hearing that the shoreline here in question is not one of  
18 state-wide significance. That shoreline is an inlet of approximately  
19 three acres within the limits of the Town of Steilacoom. The tidelands  
20 in the inlet have been platted and are for the most part in private  
21 ownership. Inner and outer harbor lines have been established a  
22 short distance seaward of the proposed construction and Fifth Street,  
23 although not physically available for public access thereon in the  
24 inlet, extends through the platted tidelands to the inner harbor lines.

25 III.

26 The inlet is currently traversed by two mainline railroad tracks

27 FINDINGS OF FACT,

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1 which are major rail transportation links. The mainline tracks are  
2 located on an old, existing, wooden-pile trestle bridge 513 feet in  
3 length. An opening in the bridge provides small boat ingress and egress  
4 to the inlet from the outside waters during certain tidal conditions.  
5 That the visual qualities of water-oriented vistas seaward of the  
6 contemplated causeway development will remain unchanged by the proposed  
7 construction and ingress and egress from the inlet to and from  
8 Puget Sound will remain unchanged. There will be some diminution  
9 of the view from the beach level looking seaward. However, the primary  
10 private use of the inlet is as a boat moorage for the adjacent upland  
11 property owners. Public use of the inlet is limited to lower type  
12 conditions and such use is further limited by the difficulty of access  
13 to it. There is no developed public access to the inlet other than by  
14 walking the beach during the lower tides or negotiating a hazardous  
15 high slope at the upland end of Fifth Street. The inlet is practically  
16 devoid of aquatic life.

17 IV.

18 A 30-inch diameter storm water drainage outfall pipe is  
19 presently located at the foot of Fifth Street, as constructed,  
20 and serves as the terminus of the town's drainage system of  
21 approximately 850 upland acres. The drainage empties into the head  
22 of the inlet. The presence of algae, bulkheads, beach structures  
23 and the wooden-piling trestle makes the inlet area generally  
24 unattractive. Siltation of the inlet from the drainage system  
25 is likely to continue at present rate of one-inch in two hundred  
26 years.

V.

On July 2, 1972, respondent applied for a substantial development permit to replace the existing 513 foot long wood-pile trestle by the extension of the riprap causeway and construction of a shorter concrete bridge 108 feet in length with causeway approaches on each side of the new bridge totaling 406 feet in length. Construction of the causeway will consist of a fill of free draining granular material with riprap rock surrounding the perimeter of the granular fill. The top of the causeway approaches will consist of riprap protection a minimum of two feet above the granular fill. The new bridge will consist of six spans of which the two center spans will provide a minimum of 20 feet horizontal free clearance and vertical clearance of 8.2 feet above mean high water for passage of water craft. The new construction will be the same heighth as the existing trestle and the width of the proposed fill is as follows: 160 lineal feet of embankment will be less than 80 feet in width; 100 lineal feet will be between 80 and 85.5 feet and 145 lineal feet will be 88 feet in width.

VI.

The Town Planning Commission unanimously recommended the approval of the permit. On October 17, 1972, the Town Council denied the permit.

VII.

The construction of the proposed development will be of long-term, state-wide interest. The railroad link in question across the Fifth Street Waterway constitutes an integral part of the

1 intrastate and interstate network of rail transportation facilities  
2 within the State of Washington and the United States, used for  
3 transportation of commerce and passengers, and thereby contributes  
4 to the economic development of the State and country. The economical  
5 movement of intrastate and interstate commerce and passengers by rail  
6 is a state-wide public interest and long-term public benefit. The  
7 continuation of a viable rail carrier system in the State of  
8 Washington and in the United States is a state-wide and nationwide  
9 interest in that the control of pollution emissions from rail carriers  
10 is superior to that of motor carriers. The replacement and upgrading  
11 of outmoded railroad facilities which form an integral part of the  
12 State's rail system, thus reducing excessive maintenance costs and  
13 promoting the public safety of both passengers and commerce, is a  
14 long-term benefit to the State. Between 800 and 1500 passengers  
15 daily enjoy the physical and aesthetic qualities of the State's  
16 Puget Sound shoreline at the location in question and, appellant  
17 annually transports approximately 25 million tons of freight  
18 over the rail facility in question. The Union Pacific Railroad  
19 also transports substantial commerce over this same facility. The  
20 multitude of commodities carried over the facility in question are  
21 basic and necessary to the standard of living of the citizens of  
22 Washington.

23 VIII.

24 Appellant has obtained permits from the following governmental  
25 agencies: Department of Transportation, United States Coast Guard  
26 Permit; State of Washington Department of Natural Resources Order;

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and State of Washington Fisheries and Game Hydraulics Project Approval. The public rights of navigation and corollary rights incidental thereto were shown not to be adversely affected by the construction of the proposed development, and the rights of the public in the navigable waters affected by the proposed development remain unchanged.

IX.

No adverse effect to the public health, vegetation, wildlife, waters and aquatic life can reasonably be anticipated from construction of the proposed development. The construction of the causeway will restrict wave action in the inlet and hence contribute to the buildup of siltation within a part of the inlet. However, the siltation itself is not and will not be caused by appellants' bridge and causeway. It is caused by respondent's storm drain system, the proper control and management of which by respondent can minimize the siltation.

X.

The public rights of navigation are not adversely affected by the proposed development. Its benefits outweigh any minor detrimental environmental impacts on the inlet.

XI.

Appellant prepared an environmental impact statement and filed it, together with its application for a substantial development permit, with respondent. That statement concluded that the adverse environmental impact of the development "should be minimal."

Respondent did not prepare its own environmental impact statement. However, the Mayor testified that the Town Council, in denying the

1 permit, considered some environmental factors, i.e., silting, scouring  
2 and odors. The town made no determination as to whether the proposed  
3 development was or was not a major action under the State Environmental  
4 Protection Act.

5 At the hearing of this appeal appellant submitted to this Board  
6 a new environmental impact statement.

7 From which comes these

8 CONCLUSIONS OF LAW

9 I.

10 This Board has jurisdiction of the parties and subject matter of  
11 the appeal.

12 II.

13 The substantial development permit sought by appellant is  
14 consistent with and meets the policy section of the Shoreline Management  
15 Act and the guidelines of the Department of Ecology.

16 III.

17 The proposed development will not result in adverse effects to  
18 the public health, the land and its vegetation and wildlife, and the  
19 waters of the state and their aquatic life and generally protects  
20 public rights of navigation, if any exist under the circumstances of  
21 this case. The proposed development is designed in a manner to minimize,  
22 insofar as practical, any resultant damage to the ecology and  
23 environment of the shoreline area and any interference with the  
24 public's use of the water.

25 IV.

26 We believe, after considering all environmental factors, that

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 the proposed development, and hence issuing a permit therefore,  
2 would constitute "major action" but that the effect upon the  
3 environment would be insignificant. However, those determinations  
4 under State Environmental Protection Act must first be made  
5 by respondent before review thereof may be made by this Board.  
6 Juanita Bay Valley Community Association v. The City of Kirkland  
7 9 Wn. App. 59 (June 4, 1973).

8 V.

9 The environmental impact statement which was considered by  
10 respondent was not a "detailed statement" as contemplated by SEPA.

11 From which comes this

12 ORDER

13 The denial of appellant's shoreline substantial development  
14 permit is reversed, and remanded to the Town of Steilacoom with  
15 directions to approve said application and issue the permit after  
16 complying and in accordance with the requirements of the State  
17 Environmental Protection Act.

18 DONE at Lacey, Washington this 20<sup>th</sup> day of December, 1973.

19 SHORELINES HEARINGS BOARD

20  
21 Walt Woodward  
22 WALT WOODWARD, Chairman

23  
24 W. A. Gissberg  
25 W. A. GISSBERG, Member

26  
27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

MARY ELLEN McCAFFREE, Member



Arden A. Olson  
ARDEN A. OLSON, Member

Gordon Y. Ericksen  
GORDON Y. ERICKSEN, Member

Tracy J. Owen  
TRACY J. OWEN, Member

*Request for*

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF THE DENIAL )  
OF A SUBSTANTIAL DEVELOPMENT )  
PERMIT BY THE TOWN OF )  
STEILACOOM, )  
BURLINGTON NORTHERN, INC., )  
Appellant, )  
vs. )  
TOWN OF STEILACOOM, )  
Respondent. )

SHB No. 40

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

THIS MATTER being a request for review of the denial of a substantial development permit to fill and construct a new bridge having come on regularly for hearing before the Shorelines Hearings Board on August 27, 28 and 29, 1973, at Steilacoom, Washington; and appellant Burlington Northern, Inc. appearing through its attorney, Gerald A. Troy and respondent Town of Steilacoom appearing through its attorney, K. Michael Jennings; and Board members present on

1 August 27 and 28 were W. A. Gissberg, Walt Woodward, Arden A. Olson  
2 and Gordon Y. Ericksen and Board members present on August 29, 1973  
3 were W. A. Gissberg and Arden A. Olson; and the Board having  
4 considered the sworn testimony, exhibits, records and files herein  
5 and post-hearing affidavits and briefs of the parties and having  
6 entered on the 20th day of December, 1973, its proposed Findings of  
7 Fact, Conclusions and Order; and the Board having served said proposed  
8 Findings, Conclusions and Order upon all parties herein by certified  
9 mail, return receipt requested and twenty days having elapsed from  
10 said service; and

11 The Board having received no Exceptions to said proposed Findings,  
12 Conclusions and Order; and the Board being fully advised in the  
13 premises; now therefore,

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
15 Findings of Fact, Conclusions and Order, dated the 20th day of  
16 December, 1973, and incorporated by this reference herein and  
17 attached hereto as Exhibit A, are adopted and hereby entered as the  
18 Board's Final Findings of Fact, Conclusions of Law and Order herein.

19 DONE at Lacey, Washington this 31<sup>st</sup> day of January, 1974.

20 SHORELINES HEARINGS BOARD

21 Walt Woodward  
22 WALT WOODWARD, Chairman

23 Arden A. Olson  
24 ARDEN A. OLSON, Member

25 W. A. Gissberg  
26 W. A. GISSBERG, Member

27 Gordon Y. Ericksen  
GORDON Y. ERIKSEN, Member

28 FINAL FINDINGS OF FACT,  
29 CONCLUSIONS AND ORDER

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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
MASON COUNTY TO TWANOH FALLS  
BEACH CLUB, INC.

M. W. BRACHVOGEL, et al.  
and RANDY E. AND CAROL  
R. McILRAITH, et al.,

Appellants,

vs.

MASON COUNTY and TWANOH FALLS  
BEACH CLUB, INC.,

Respondents,

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
SLADE GORTON, ATTORNEY GENERAL,

Amici Curiae,

SHB Nos. 45 and 45-A

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, a request for a reversal of a substantial development  
permit granted by Mason County to Twanoh Falls Beach Club, Inc., came  
before members of the Shorelines Hearings Board at a formal hearing in

1 Olympia, Washington conducted at 10:00 a.m. on March 12, 1973. Board  
2 members present were: Walt Woodward, Chairman, W. A. Gissberg, presiding  
3 officer, James T. Sheehy and Robert F. Hintz.

4 The appellants, M. W. Brachvogel, et al., were represented by John  
5 Petrich, and Phillip M. Best represented Randy E. and Carol R. McIlraith,  
6 et al. Twanoh Falls Beach Club, Inc. was represented by Mary Ellen  
7 Hanley. Mason County was not represented. Robert V. Jensen appeared as  
8 amicus curiae. The proceedings were recorded by Richard Reinertsen, an  
9 Olympia court reporter.

10 The Board entered its Proposed Findings, Conclusions and Order on  
11 June 11, 1973, which Proposed Order conditionally approved the substantial  
12 development permit issued by Mason County to respondent, Twanoh Falls  
13 Beach Club, Inc. Exceptions were duly filed with the Board by appellant,  
14 M. W. Brachvogel, et al. The Board asked for further oral argument or  
15 written statements of the parties on appellants' numbered Exception VII  
16 relating to the Board's proposed Conclusion II. That proposed Conclusion  
17 was that the granting of the permit was not a major action requiring an  
18 environmental impact statement under the State Environmental Policy Act  
19 (SEPA). Briefs were submitted by the parties on that question and  
20 supplemented by oral argument before certain Board members on July 25,  
21 1973.

22 Having carefully considered all of the Exceptions and the contentions  
23 of the parties, the Board concludes that appellant Brachvogel's  
24 Exception VII is well taken and should be and therefore is granted. We  
25 believe the recent case of Juanita Bay Valley Community Association vs.  
26 City of Kirkland, 9 Wn. App. 59 (June 4, 1973) to be controlling and

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1 that it prevents this Board, as a matter of law, from making the initial  
2 determination that the issuance of the permit was not a major action  
3 under SEPA. We are unable to ascertain, from an examination of the  
4 record, whether that determination was made by Mason County. The mere  
5 fact that no environmental impact statement was prepared is not in  
6 itself proof that the County made a determination that none was  
7 required, nor can we indulge in such a presumption. Further, the record  
8 does not affirmatively show (and we believe that it must) that the  
9 County considered the environmental factors in the project before  
10 determining whether or not an environmental impact statement must be  
11 prepared. The record reveals that some factors affecting the  
12 environment were before the County, in written form and we are asked  
13 by respondents to presume that the County Commissioners did not neglect  
14 their duty of considering them. We express no opinion whether the  
15 factors before them were comprehensive and sufficient. See Hanly vs.  
16 Mitchell, 460 F.2d 640 (2d Cir. 1972). We are unable to ascertain  
17 what they did consider or whether they gave any consideration.

18 Here too we cannot presume that the County considered environmental  
19 factors. We cannot do so because of the strong, directive language of  
20 SEPA found in RCW 43.21C.030.

21 In remanding this matter to Mason County, we adhere to those  
22 Proposed Findings and Order which relate to and are relevant to the  
23 Shoreline Management Act. However, we, as stated in Hanly vs.  
24 Mitchell, supra, do not "regard the remand as pure ritual."

25 We direct that the determination to be made under SEPA be made in  
26 good faith after full consideration. We suggest that the County

27 FINDINGS OF FACT,  
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Commissioners address themselves to a consideration of the environmental factors mentioned in the dissent of Mr. Sheehy to the Proposed Findings, Conclusions and Order heretofore provided to the parties to this request for review.

If the County determines that no environmental impact statement is required because the quality of the environment will not be significantly affected, this Board can review that question again.

Accordingly, from the evidence presented (testimony and exhibits) and assisted by arguments by counsel and from a review of the transcript of the hearing, the Shorelines Hearings Board makes the following:

#### FINDINGS OF FACT

##### I.

On November 13, 1972, the Mason County Board of County Commissioners, after public hearings conducted on four separate dates, granted Shorelines Management Substantial Development Permit No. 24 to Twanoh Falls Beach Club, Inc. for a development on the shoreline of Hood Canal located on a site seven and eight-tenths miles southwest of Belfair, Washington. In authorizing the permit, the Board was acting as the "local governmental agency" under the Shoreline Management Act of 1971 and followed procedures established pursuant to the requirements of that Act. Development authorized by the permit was to "repair and replace piling, float, etc. destroyed by ice and construct a new float, provided property line of Twanoh Falls development be adequately posted, the current county boating ordinance posted conspicuously on dock, along with 'no skiing from west side of pier' signs to be posted". In addition, the following standard conditions were imposed:

FINDINGS OF FACT,  
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- ( (
- 1 1. This permit is granted pursuant to the Shoreline Management Act  
2 of 1971 and nothing in this permit shall excuse the applicant  
3 from compliance with any other Federal, State or local statutes,  
4 ordinances or regulations applicable to this project.
  - 5 2. This permit may be rescinded pursuant to Section 14(7) of the  
6 Shoreline Management Act of 1971, in the event the permittee  
7 fails to comply with any condition hereof.
  - 8 3. Construction pursuant to this permit will not begin or is not  
9 authorized until forty-five (45) days from the date of filing  
10 of the final order of the local government with the Department  
11 of Ecology or Attorney General, whichever comes first; or until  
12 all review proceedings initiated within forty-five (45) days  
13 from the date of filing of the final order of the local govern-  
14 ment with the Department of Ecology or Attorney General,  
15 whichever comes first; or until all review proceedings  
16 initiated within forty-five (45) days from the day of such  
17 filing have been terminated.

18 II.

19 The site consists of 372 lineal feet of waterfront on Hood Canal  
20 containing approximately 56,000 square feet between the bulkheaded  
21 shoreline and the State highway. The site is jointly owned by members  
22 of the Twanoh Falls Beach Club, Inc. who are eligible for membership by  
23 reason of ownership of one or more lots in a 397 lot subdivision on the  
24 hillside lying south of the State highway abutting the beachfront  
25 property. About 150 of these lots are improved and capable of occupancy.  
26 Improvements now existing on the beachfront property consist of a

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bulkhead, cabana dressing rooms, playground equipment and a line of piles extending approximately 434 feet northward into Hood Canal near the southwestern edge of the property. The piles have been used to anchor a floating walkway and a 120 foot floating dock with a capacity to moor 18 to 20 small craft.

### III.

The hearings before the Mason County Board of County Commissioners revealed opposition to the proposed development by owners of adjacent property and by others. Opposition was based upon hazards to swimmers caused by overconcentration of small boat movements, water skiing activity and contamination of the water, and by the creation of excessive noise and by motor oils.

### IV.

The record is silent as to whether the County Commissioners considered environmental factors in the project and whether they determined that it is or is not a major action significantly affecting the quality of the environment. The County did not require the preparation of an environmental impact statement.

### V.

The Hood Canal Advisory Commission is a citizens group which consists of three members from each of three counties: Mason, Kitsap and Jefferson. Members from each of the counties are appointed by the respective County Boards. The Advisory Commission meets monthly concerning environmental matters and problems in areas bordering Hood Canal. From time to time its advice is sought by the County Boards of its three constituent counties. In response to a request by Mason County

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Board of County Commissioners, the Hood Canal Advisory Commission reviewed Application No. 24 by Twanoh Falls Beach Club, Inc., viewed the site and subsequently recommended that the application for a substantial development permit as proposed by the applicant be denied.

#### VI.

The existing development, including the floating walkway extending 442 feet into Hood Canal and the 120 foot mooring float at right angles thereto were installed in 1965 without a U. S. Army Corps of Engineers' permit or a State Hydraulic Permit. Facilities have been in continuous use since that date and no notice of violation has been made by the U. S. Army Corps of Engineers or the State of Washington.

#### VII.

Hood Canal shorelines are shorelines of state-wide significance having high aesthetic, recreational and ecological values. The shoreline in the vicinity of this application is intensively developed with residential structures occupied year round or seasonally by summer residents.

#### VIII.

Mason County has completed its shoreline inventory as required by the Shoreline Management Act of 1971; development of its master program is in process. Evaluation of Application No. 24 by the County Board was based upon the policies set forth in Section 2 of the Act and the guidelines issued by the Department of Ecology on June 20, 1972.

#### IX.

The Twanoh Falls Beach Club, Inc. has made the application to the Department of the Army, Seattle Corps of Engineers for the work

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1 contemplated in its Application No. 24 to Mason County for a substantial  
2 development permit.

3 X.

4 The plan for the project as set forth in the Corps of Engineers  
5 application was utilized in the Application for Substantial Development  
6 No. 24. That plan calls for repair and preservation of existing bulkhead  
7 and pier and the driving of additional piles in Hood Canal. Under the  
8 plan, the existing 24 piles would be supplemented by 39 additional  
9 piles and the conversion of the floating walkway to a rigid pier or  
10 walkway extending 434 feet into Hood Canal. The surface of the walkway  
11 would be 15.8 feet above mean lower low water. The walkway would be  
12 protected on both sides by three foot high handrails. The plan includes  
13 the existing float 120 feet long reached by a thirty foot ramp,  
14 extending eastward from the walkway at a point 370 feet out from the  
15 existing rock bulkhead. A new finger float 120 feet long reached by a  
16 thirty foot ramp would extend eastward from the end of the walkway at a  
17 point approximately 430 feet out from the existing bulkhead.

18 From these Findings of Fact, the Shorelines Hearings Board  
19 comes to these

20 CONCLUSIONS

21 I.

22 Appellants contend that in granting a conditional substantial  
23 development permit to Twanoh Falls Beach Club, Inc., the Mason County  
24 Board of Commissioners should have complied with the Administrative  
25 Procedures Act because in granting said permit it was acting as an  
26 agency of the State. Such contention is without merit; County

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Commissioners need not comply with the Administrative Procedures Act.

II.

Mason County did not comply with SEPA and is required to do so prior to the issuance of any substantial development permit.

III.

The conditional permit granted by the Mason County Board of Commissioners and the application by the Twanoh Falls Beach Club, Inc. for a U. S. Army Corps of Engineers' permit was for a total development incorporating previous improvements installed with or without a permit. Hood Canal and its bordering lands constitute shorelines of state-wide significance. The area involved here possesses high scenic and recreational values, generally recognized and appreciated as a finite and precious resource by residents and visitors alike.

This is a dispute between homeowners of individual properties utilized for dwelling and recreational purposes on the one hand and joint or corporate owners of adjacent property utilized exclusively for recreational purposes. The focus of water-oriented activities by the owners and guests of 150 improved nearby properties on 372 lineal feet of commonly owned waterfront has produced a sharp contrast with the density of persons and their recreational pursuits on the adjoining and nearby properties which generally support lower concentrations of persons and activities on a front foot basis. It must be recognized that superb recreational environments will have peak periods of attraction and use. In these circumstances the rate of use can be self-regulating: overcrowding discourages more activity unless the capacity of the facility is expanded.

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IV.

The potential demand for use of the Twanoh Falls Beach Club, Inc. facilities could be more than double the current rate of use since less than half of the lots of the potentially participating members are developed for occupancy. Some reasonable control of use and activities should be established.

V.

The limited shoreline resource can provide a direct recreation opportunity to people in each of three ways, each of which must be considered as a legitimate opportunity to enjoy this finite resource: (1) through private ownership; (2) through joint or community ownership, and (3) through public ownership. Public ownership of waterfront recreational facilities offers the highest benefit cost ratio, yet the amount of public ownership must necessarily remain quite limited. Joint or community ownership of waterfront presents the next highest benefit cost ratio, providing an effective means for multiple use and enjoyment of the shoreline resources.

VI.

The development as modified by this order is consistent with the policy of the Shoreline Management Act and the guidelines of the Department of Ecology. Therefore, the Shorelines Hearings Board makes this

ORDER

1. The permit is remanded to the Mason County Commissioners to consider the environmental factors in the project and to make a determination, based on such consideration, as to: (a) whether the project is or is not a major action significantly affecting the quality

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1 of the environment; (b) whether or not to require the preparation of an  
2 environmental impact statement, and (c) to reconsider the issuance of  
3 the substantial development permit in light of such determinations.

4 2. Upon reconsideration of the issuance of the permit, as above  
5 provided, and if the same shall be granted, this Board requires the  
6 following additional conditions thereto:

- 7 (a) That the rigid piers supporting the walkway extend no  
8 farther than 430 feet from the existing rock bulkhead;  
9 (b) That only one 120 foot finger float be installed extending  
10 eastward from the end of the pier, and  
11 (c) That use of the pier and beach facilities be limited to the  
12 owners and guests of the existing 397 platted lots.

13 DONE at Lacey, Washington this 10th day of August, 1973.

14 SHORELINES HEARINGS BOARD

15 Walt Woodward  
16 WALT WOODWARD, Chairman

17 Ralph A. Bewick  
18 RALPH A. BEWICK, Member

19 W. A. Gissberg  
20 W. A. GISSBERG, Member

21 Robert F. Hintz  
22 ROBERT F. HINTZ, Member

23 Tracy J. Owen  
24 TRACY J. OWEN, Member

25 James T. Sheehy  
26 JAMES T. SHEEHY, Member

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DISSENT

I dissent from the Conclusions of Law and Order which the majority of this Board have entered. Both the applicant, Twanoh Falls Beach Club, Inc., and the Board of commissioners of Mason County have failed to comply with the purpose and spirit of the Shoreline Management Act of 1971 (SMA) and the State Environmental Policy Act of 1971 (SEPA). A substantial development permit as granted by the Mason County Commissioners should either be reversed and denied altogether, or remanded to the Board of Mason County Commissioners for substantial compliance with both Acts.

I agree with the majority that the permit must be remanded for compliance by the Commissioners with SEPA, but I dissent from the majority's Conclusion No. VI that the development as modified by its order is consistent with the policy of the SMA and the guidelines of the Department of Ecology.

Before approving this or any other pier application for Hood Canal we should know how the plan would fit in with a master program for the Canal. Another way of stating this is that a type of zoning should be promulgated by the Mason County Commissioners which would deal with location, spacing, length, buffer zones and density of use. No master program for the portion of Hood Canal lying within Mason County has been developed. The SMA provides that in preparing such a master program, local government shall give preference to uses in the following order of preference as stated in RCW 90.58.020:

"1. Recognize and protect the statewide interests over local interests;

"2. Preserve the natural character of the shoreline;

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"3. Result in long-term over short-term benefit;

"4. Protect the resources and ecology of the shoreline;

"5. Increase public access to publicly owned areas of the shorelines;

"6. Increase recreational opportunities for the public in the shoreline;

"7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."

The majority appears to approve of this type of development in its Conclusion No. V because it provides access to the beach with a higher "benefit cost ratio" than individual private ownership of the shoreline. It is questionable whether this particular use comes within any of the preferred uses under the SMA and this argument standing alone provides no justification for approval under the SMA.

RCW 90.58.140 provides that until such time as an applicable master program has become effective, a permit shall be granted only when the development proposed is consistent with the guidelines and regulations of the Department of Ecology. The proposed development is inconsistent with those guidelines. For instance, the guidelines relating to piers (WAC 173-16-060(19)), provides in part as follows: (1) That the use of floating docks should be encouraged in those areas where scenic values are high; (2) That those agencies faced with the granting of pier applications should establish criteria for their location, spacing and length with regard to the geographical characteristics of the particular area; (3) That the capacity of the shorelines sites to absorb the impact of waste discharges from boats, including gas and oil spillage,

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1 should be considered.

2 The evidence before this Board does not convince me that the  
3 existing floating dock needs to be converted to a permanent pier and  
4 it appears that the Mason County Commissioners have developed no set  
5 of standards of criteria for the location, spacing and length of piers  
6 on Hood Canal. Neither does there seem to be any evidence that the  
7 impact of waste discharges has been investigated in any meaningful way,  
8 either by the applicant or the County Commissioners.

9 As measured by the guidelines of the Department of Ecology  
10 promulgated in December, 1972, for use with SEPA determinations, the  
11 project will also significantly affect the quality of the environment.  
12 The Board has taken the position that the permit application is for  
13 a total development incorporating previous improvements installed  
14 with or without a permit. The evidence before the Board indicated that  
15 the floating dock that now exists has had a great impact on the mouth  
16 of the creek on which it was built. Where once there was an abundant  
17 oyster bed, now there is none; where once the fish population in the  
18 creek was plentiful, now it is very small, if in fact it does exist;  
19 where once a significant smelt fishery was found on this shore, now  
20 there is none; where once the view of the tidelands and the waters of  
21 Hood Canal were unobstructed, now it is framed by unsightly piling.  
22 The additional construction would only increase these detrimental  
23 effects. These effects are irreversible for at least as long as the  
24 pier exists in its present location.

25 It appears that the only systematic evaluation for this pier  
26 application was made by the Hood Canal Advisory Commission and this

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1 official citizens' group concluded and recommended to the Mason County  
2 Commissioners that the application for permit be denied on the basis  
3 that a float pier was preferable in an area of such scenic beauty as  
4 Hood Canal; that the pier was located at one edge of the property  
5 rather than the center, causing a significant interference in the use of  
6 the adjoining property; and finally, that the pier was too long in  
7 relation to the size of the beach it served.

8       There has been little or no systematic evaluation by the Board of  
9 Commissioners of Mason County nor this Board as to how this particular  
10 pier will actually benefit the people it is intended to benefit or how  
11 it will relate to a total picture of development of this type for  
12 Hood Canal. There is a question whether this project is needed at all  
13 for adequate recreational use of the area by the members of the Beach  
14 Club. The boat moorage facilities themselves will not change. Most of  
15 the individual beachowners adjacent to or near the project in this  
16 matter use the buoy method of mooring their boats which has no  
17 appreciable effect on the environment. Since a public launch facility  
18 is available nearby at Twanoh State Park, I see no reason why this  
19 method could not be used by members of the Beach Club. At the very  
20 least, I see no reason why the Club cannot continue with the existing  
21 floating dock. Although there was a claim made that the existing  
22 dock has a somewhat higher maintenance cost than a permanent pier, the  
23 testimony was vague on this particular issue and it did not appear that  
24 the cost was excessive when considered on a per-lot basis.

25       There has been an inadequate evaluation of the effects on the  
26 shoreline by reason of the upland use and the large numbers of people

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1 which would be using the relatively small stretch of beach. In the  
2 recent decision of the Court of Appeals in the case of Merkel v. Port  
3 of Brownsville, 8 Wn. App. 844 (Div. II 1973), the Court held that a  
4 single improvement or project having an interrelated effect on both  
5 uplands and shorelines cannot be divided into segments for purposes of  
6 complying with the provisions of SEPA and SMA. This case applies to  
7 the Twanoh Falls Beach Club, Inc. improvement as the application for  
8 a pier is an integral part of the total recreational home development.  
9 In considering the numbers of people which would be entitled to use  
10 the relatively small area of beach, there could well be a density of  
11 use on this particular segment of shoreline which would greatly exceed  
12 the density of use on many, if not all, of our State parks. In fact,  
13 when all lots in the platted upland are sold and occupied and all  
14 owners and their families have joined in membership in the Beach Club,  
15 the density of use in the shoreline involved in this matter could  
16 eventually reach a figure which would constitute an inescapable,  
17 intolerable and unjust nuisance to the property owners adjacent to and  
18 in close proximity to the Twanoh Falls Beach Club.

19 Until we are provided with some kind of data or criteria, such  
20 as has not been provided in this case, this Board will be unable to  
21 make an intelligent and informed decision concerning pier applications.  
22 Private beach clubs should not be automatically allowed to construct  
23 environmentally damaging structures merely because they claim to give  
24 more people access to a limited area of beach. The project should be  
25 evaluated to determine whether or not it is really needed and how  
26 many people would really benefit by the construction. This should be

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1 compared with how many people would be directly and detrimentally  
2 affected. It appears that the plan as approved will provide for  
3 moorage for only fifteen (15) boats, but more than fifteen (15)  
4 adjoining owners would be detrimentally affected by this project.  
5 There is no buffer zone between this pier and adjoining property such  
6 as we require for State parks and industries. No less should be  
7 required in this type of project.

8 For all of the foregoing reasons it is my belief that the permit  
9 should be either denied or remanded to the Board of Commissioners of  
10 Mason County for proceedings in conformity with both SEPA and SMA.

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12  
13 JAMES T. SHEEHY, Member  
14 SHORELINES HEARINGS BOARD  
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